

PROB. 12B  
(7/93)

ORIGINAL

**United States District Court**

for the

**DISTRICT OF HAWAII**

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII  
AUG 30 2007  
at    o'clock and    min.    M.  
SUE BEITIA, CLERK

**Request for Modifying the Conditions or Term of Supervision  
with Consent of the Offender**

*(Probation Form 49, Waiver of Hearing is Attached)*

Name of Offender: HARVEY CRIVELLO

Case Number: CR 04-00032HG-01

Name of Sentencing Judicial Officer: The Honorable Judge Helen Gillmor  
Chief U.S. District Judge

Date of Original Sentence: 3/17/2005

Original Offense: POSSESSION WITH INTENT TO DISTRIBUTE 50 GRAMS OR  
MORE OF METHAMPHETAMINE, in violation of 21 U.S.C.  
§§ 841(a)(1), a Class A felony

Original Sentence: Fifteen (15) months imprisonment to be followed by 5 years of supervised release with the following special conditions: 1) That the defendant participate in a substance abuse program, which may include drug testing at the discretion and direction of the Probation Office; 2) That the defendant provide the Probation Office access to any requested financial information; and 3) That the defendant shall submit his person, residence, place of employment, or vehicle to a search conducted by the U.S. Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of supervision. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other resident that the premises may be subject to search pursuant to this condition.

Type of Supervision: Supervised Release    Date Supervision Commenced: 5/11/2006

**PETITIONING THE COURT**

[X] To modify the conditions of supervision as follows:

*General Condition: That the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of the commencement of supervision and at least two periodic drug tests thereafter but no more than 8 valid drug tests per month during the term of supervision (mandatory condition).*

## CAUSE

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1. Standard Condition No. 7	The subject admitted to smoking marijuana on or about 7/29/2007.

On 7/31/2007, the subject reported to the Probation Office unexpectedly. He admitted that on or about 7/29/2007, he had smoked marijuana at his brother's home in Nanakuli. He explained that he was at his brother's house for a barbecue and a friend offered a marijuana cigarette to him. He took "a puff" and threw the cigarette on the ground. He reported feeling extremely guilty about his conduct that he had to speak to this officer in person about the incident. It should be noted that the subject submitted a urine specimen on 7/30/2007 which tested negative for illicit drugs on a non-instrumented testing device (NITD). It appears that the amount of marijuana ingested by the subject was lower than the threshold level of the NITD necessary to produce a positive test result. The negative NITD result appears to corroborate the subject's claim that he ingested a "puff" of a marijuana cigarette. The subject apologized to this officer and acknowledged that he made a stupid mistake. He requested another chance to demonstrate his compliance with his supervision conditions. The subject was verbally admonished for his violation and warned that any further violations may result in adverse court action. Based on the subject's honesty about his drug use, he is amenable to continued supervision.

The subject is currently participating in a urine drug testing program at Hina Mauka Waipahu. The subject agreed to modify his conditions of supervision, to accommodate the revised language for participation in substance abuse treatment and to comply with the requirements of random drug testing under U.S. v. Stephens. In light of U.S. v. Stephens, it is recommended that the Court amend the mandatory Violent Crimes Control Act drug testing condition as noted above. The modification of this mandatory condition will provide the Probation Office with the necessary tools to monitor the subject and to protect the community. The Probation Office is respectfully recommending that the Court take no action at this time and to modify his supervision conditions and impose the aforementioned special condition. The Court will be notified and further action may be requested if he is unable to comply with the conditions of supervised release.

Attached is a signed Waiver of Hearing to Modify Conditions of Supervised Release. The subject waives his right to a hearing and to assistance of counsel. The subject agrees to the modification of the conditions of supervised release. The subject's attorney and the U.S. Attorney's Office have been notified of the proposed modification and have no objections to the modification.

Respectfully submitted by,



JOANN S. HAMAJI  
U.S. Probation Officer

Approved by:



PETER D. YOSHIHARA  
Supervising U.S. Probation Officer

Date: 8/21/2007

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THE COURT ORDERS:

☒ The Modification of Conditions as Noted Above  
☐ Other



HELEN GILLMOR  
Chief U.S. District Judge

8.28.07  
Date

PROB 49  
(5/96)

## United States District Court

District of Hawaii

### Waiver of Hearing to Modify Conditions of Probation/Supervised Release and/or Extend Term of Supervision

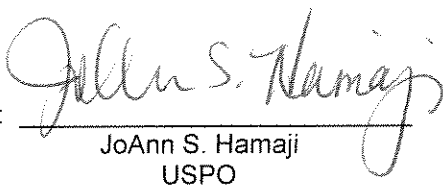
I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release and/or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release and/or to the proposed extension of my term of supervision:

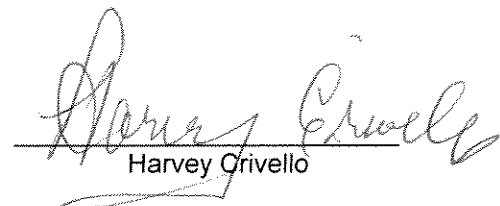
[ X] To modify the conditions of supervision as follows:

*That the defendant shall refrain from any unlawful use of a controlled substance.  
Shall submit to one drug test within 15 days of the commencement of supervision and  
at least two periodic drug tests thereafter but no more than 8 valid drug tests per  
month during the term of supervision (mandatory condition).*

Witness:

  
JoAnn S. Hamaji  
USPO

Signed:

  
Harvey Crivello

9-31-07  
Date